

Dear Senators PATRICK, Souza, Ward-Engelking, and
Representatives DIXON, Furniss, Berch:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of
the Department of Finance:

IDAPA 12.00.00 - Notice of Omnibus Rulemaking - Proposed Rule (Docket No. 12-0000-2100).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 11/12/2021. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 12/10/2021.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the
memorandum attached below.



Terri Kondeff
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Commerce & Human Resources Committee and the House Business Committee

FROM: Principal Legislative Drafting Attorney - Ryan Bush

DATE: October 26, 2021

SUBJECT: Department of Finance

IDAPA 12.00.00 - Notice of Omnibus Rulemaking - Proposed Rule (Docket No. 12-0000-2100)

Summary and Stated Reasons for the Rule

The Department of Finance submits Notice of Omnibus Rulemaking via Docket No. 12-0000-2100. The Department states that it is republishing previously existing rules that were submitted to and reviewed by the Legislature.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was not conducted by the Department. There is no anticipated fiscal impact with this rulemaking.

Statutory Authority

This rulemaking appears to be within the statutory authority granted to the Department of Finance in Sections 26-2144, 26-31-103, 26-31-204, and 26-31-302, Idaho Code.

cc: Department of Finance
Lisa Baker

*** PLEASE NOTE ***

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

Paul Headlee, Deputy Director Legislative Services Office	Kristin Ford, Manager Research & Legislation	Keith Bybee, Manager Budget & Policy Analysis	April Renfro, Manager Legislative Audits	Glenn Harris, Manager Information Technology
--	---	--	---	---

Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

Tel: 208-334-2475
legislature.idaho.gov

IDAPA 12 – IDAHO DEPARTMENT OF FINANCE

DOCKET NO. 12-0000-2100

NOTICE OF OMNIBUS RULEMAKING – PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 26-2144, 26-31-103, 26-31-204, and 26-31-302, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This proposed rulemaking publishes the following rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 12, rules of the Idaho Department of Finance:

IDAPA 12

- 12.01.04, *Rules Pursuant to the Idaho Credit Union Act*; and
- 12.01.10, *Rules Pursuant to the Idaho Residential Mortgage Practices Act*.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2022 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Anthony Polidori, (208) 332-8060.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

DATED this October 20, 2021.

Anthony Polidori
Deputy Director
Idaho Department of Finance
800 Park Blvd., Suite 200
P.O. Box 83720
Boise, ID 83720-0031
Phone: (208) 332-8060
Fax: (208) 332-8099

IDAPA 12 – IDAHO DEPARTMENT OF FINANCE

12.01.04 – RULES PURSUANT TO THE IDAHO CREDIT UNION ACT

000. LEGAL AUTHORITY.

This chapter is promulgated pursuant to Section 26-2144, Idaho Code. ()

001. SCOPE.

These rules implement statutory intent with respect to the regulation and supervision of state chartered credit unions in the state of Idaho. ()

002. -- 004. (RESERVED)

005. DEFINITIONS.

The definitions used in this chapter are as follows: ()

01. **Act.** Means the Idaho Credit Union Law, Chapter 21, Title 26, Idaho Code. ()

02. **Applicant.** Means a group of persons applying for a credit union charter. ()

03. **Department.** Means the Idaho Department of Finance. ()

04. **Director.** Means the Director of the Department. ()

05. **Corporate Credit Union.** Means a corporate credit union chartered under the provisions of the act. ()

06. **Credit Union.** Means a credit union chartered under the provisions of the act. ()

07. **NCUA.** Means the National Credit Union Administration. ()

006. -- 009. (RESERVED)

010. CHARTER APPLICATIONS.

01. **Guidelines for Approval of Credit Union Charters.** Each application for a credit union shall set forth or show: ()

a. The proposed name of the credit union; ()

b. The city, county, or area in which the proposed credit union is to hold its charter; ()

c. A description of the common bond for the field of membership of the potential members of the credit union. Said field of membership should indicate that there are enough potential members to allow the proposed credit union to successfully carry on credit union operations; ()

d. That the stability of employment of the potential members of the credit union or that the stability of membership in the association which comprises the common bond of membership is sufficient to allow the credit union to maintain a stable level of participation by members; ()

e. The economic characteristics of the proposed field of membership indicating the ability of members to provide funds in sufficient amounts to carry out the purposes for which the credit union is formed; ()

f. That the persons who form the common bond and potential field of membership of the credit union have indicated sufficient interest in the credit union that the Director may reasonably believe that credit union operations may be carried out successfully. ()

011. -- 019. (RESERVED)

020. SERVICES, ADVERTISING, REPORTING CRIMES, BONDS.

01. Credit Union Services. ()

a. A credit union shall not allow, by contract or otherwise, any credit union bookkeeping or record keeping services for itself, whether on or off premises, unless assurances satisfactory to the Director are provided by both the credit union and the party performing such services, which indicate that the performance thereof will be subject to rule and examination by the Director or his duly authorized representative to the same extent as if such services were being performed by the credit union itself on its own premises. If this service is "on premises" then prior written approval of the Director must be obtained before service is sold or otherwise made available to any outside customer. ()

b. The assurances referred to above shall be submitted prior to the time the contract or agreement becomes effective in the form of letters from both parties and signed by a duly authorized officer of the credit union and by the party, or duly authorized officer or representative of such party, stating they will perform the services for the credit union, that the credit union and the party performing such services have entered into an agreement, that the performance of the services will be subject to rule and examination by the Director, and that such performance of services will be made available for examination. A copy of the contract or agreement covering these services shall accompany these letters. ()

02. Advertising. ()

a. A credit union shall not issue, circulate, or publish any advertisement which misrepresents the nature of its shares, stocks, investments, certificates, or the rights of shareholders in respect thereto. ()

b. No credit union may in any advertisement: ()

i. Use the words "chartered by the state of Idaho" unless said credit union has been issued a charter by the Director; ()

ii. Use the words "National Credit Union Share Insurance Fund" or any facsimile thereof; nor use any insignia, seal, or device whatsoever which represents that the shares or deposits of the credit union are insured by the Administrator, NCUA, unless, in fact, the credit union is so insured. ()

c. The Director upon written notification to any or all credit unions may require that a true copy of the text of any advertisement be filed with his office at least five (5) days prior to the issuance, circulation, or publication of such advertisement. ()

021. -- 039. (RESERVED)

040. MEMBER BUSINESS LOANS.

01. Definitions. For the purposes of this rule, the following definitions apply: ()

a. The term "member business loan" means any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, business, or agricultural purpose, except the following are not considered member business loans for the purpose of this rule: ()

i. A loan or loans fully secured by a lien on a one to four family dwelling that is either the member's primary residence, or the member's secondary residence. ()

ii. A loan that is fully secured by shares in the credit union or deposits in other financial institutions. ()

iii. A loan, the proceeds of which are used for a commercial, business, or agricultural purpose, made to a borrower or an associated member, which, when added to such other loans to the borrower, is less than fifteen thousand dollars (\$15,000). ()

iv. A loan, the repayment of which is fully insured or fully guaranteed by, or where there is an advance commitment to purchase in full by, an agency of the federal government or a state or any of its political subdivisions. ()

b. "Reserves" means all reserves including the allowance of loan losses account and undivided earnings or surplus. ()

c. "Associated Member" means any member with a common ownership, investment or other pecuniary interest in a business or commercial endeavor. ()

d. "Immediate Family Member" means a spouse or other family members, related by blood or operation of law, living in the same household. ()

02. Requirements. A credit union may make member business loans only in accordance with the following requirements: ()

a. **Written Loan Policies.** Except as provided in this section, the board of directors must adopt specific business loan policies within sixty (60) days of the effective date of this rule and review them at least annually. A credit union must submit the proposed written policies, and any future amendments to the policies, to the Director for approval at least thirty (30) days prior to the proposed date of implementation of the member business loan program or amendments. Any credit union that is NCUA insured must also provide notice and a copy of the loan policies or amendments to the appropriate NCUA regional office within thirty (30) days before adoption and implementation of the policies or amendments. ()

b. Credit Unions that do not intend to make member business loans do not have to adopt and implement these policies. However, if such a credit union decides to begin making member business loans at some time in the future, the requirements of this section will apply, except that the specific business loan policies must be adopted and implemented no less than thirty (30) days before any member business loan is made that, at a minimum, address the following: ()

i. Types of business loans that will be made. ()

ii. The credit union's trade area for business loans. ()

iii. Maximum amount of the credit union's assets in relationship to reserves that will be invested in business loans, not to exceed three hundred percent (300%). ()

iv. Maximum amount of credit union assets in relationship to reserves that will be invested in a given category or type of business loan. ()

v. Maximum amount of credit union assets, in relation to reserves, that will be loaned to any one (1) member or group of associated members. ()

vi. Qualifications and experience of personnel involved in making and administering business loans. ()

vii. Analysis of ability of the borrower to repay the loan. ()

viii. The following considerations shall be addressed unless the board of directors finds that they are not appropriate for a particular type of business loan and states the reasons for those findings in the credit union's written policies: balance sheet, trend and structure analysis; ratio analysis of cash flow, income and expenses, and tax data; leveraging; comparison with industry averages; receipt and periodic updating of financial statements and other documentation, including tax returns. ()

ix. Collateral requirements, including loan-to-value ratios; appraisals, title search and insurance requirements; steps to be taken to secure various types of collateral; and how often the value and marketability of collateral is to be reevaluated. ()

- x. Appropriate interest rates and maturities of business loans. ()
 - xi. Loan monitoring, servicing, and follow-up procedures, including collection procedures. ()
 - c. Loans to One (1) Member. The following restrictions apply to credit unions loans to one (1) member. ()
 - i. The aggregate amount of outstanding member business loans to any one (1) member or group of associated members shall not exceed twenty percent (20%) of the credit union's reserves. ()
 - ii. If any portion of a member business loan is fully secured by a one (1) to four (4) family dwelling that is the member's primary residence or secondary residence, or by shares in the credit union or deposits in another financial institution, or insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the federal government or of a state or any of its political subdivisions, such portion shall not be calculated in determining the twenty percent (20%) limit. ()
 - iii. Credit unions seeking an exception from the twenty percent (20%) limit must present to the Director the higher limit sought, an explanation of the need to raise the limit, an analysis of the credit union's prior experience making member business loans, and a copy of its business lending policy. In addition, at the same time this information is presented to the Director, any credit union that is NCUA insured must also submit a copy of the information to the appropriate NCUA regional office for its review and comment. ()
 - iv. Any decision by the Director to grant any request to exceed the twenty percent (20%) loan-to-one borrower's limit will be made only after consultation and coordination with NCUA. ()
 - d. Allowance for Loan Losses. The determination of whether a member business loan will be classified as substandard, doubtful, or loss will rely on factors not limited to the delinquency of the loan. Non-delinquent loans may be classified, depending on an evaluation of factors including, but not limited to, the adequacy of analysis and documentation. ()
 - e. Loans classified shall be reserved as follows: ()
 - i. Loss loans at one hundred percent (100%) of outstanding amount; ()
 - ii. Doubtful loans at fifty percent (50%) of outstanding amount; and ()
 - iii. Substandard loans at ten percent (10%) of outstanding amount, unless other factors (e.g., history of such loans at the credit union) indicate that a greater or lesser amount is appropriate. ()
- 03. Prohibitions.** A credit union may not make member business loans to the following nonvolunteer, senior management employees, or to any associated member or immediate family member of such employees: ()
- a. The credit union's chief executive officer; typically this individual holds the title of president, treasurer, or manager. ()
 - b. Any assistant chief executive officers; often the assistant manager. ()
 - c. The chief financial officer or comptroller. The credit union shall not grant a member business loan where any provision for the payment, or the amount of the payment, on the loan is conditioned on the profitability or success of the business or commercial endeavor for which the loan is made. ()

041. -- 049. (RESERVED)

050. NONPREFERENTIAL TREATMENT.

01. Nonpreferential Treatment. The rates, terms, and conditions on any loan or line of credit either made to, or endorsed or guaranteed by: ()

a. An official; ()

b. An immediate family member of an official; or ()

c. Any individual having a common ownership, investment, or other pecuniary interest in a business enterprise with an official or with an immediate family member of an official, cannot be more favorable than the rates, terms, and conditions for comparable loans or lines of credit to other credit union members. "Official" means any member of the board of directors, credit committee, or supervisory committee. "Immediate family member" means a spouse or other family members, related by blood or operation of law, living in the same household. ()

051. -- 059. (RESERVED)

060. PROHIBITED FEES, COMMISSIONS, COMPENSATION.

A credit union may not make any loan or extend any line of credit if, either directly or indirectly, any commission, fee, or other compensation is to be received by the credit union's directors, committee members, senior management employees, loan officers, or any immediate family members of such individuals, in connection with underwriting, insuring, servicing, or collecting the loan or line of credit. However, salary for employees is not prohibited by this section. "Senior management employees" refers to those employees described in Subsection 040.03 of these rules. "Immediate family member" means a spouse, or other family members, related by blood or operation of law, living in the same household. () ()

061. -- 999. (RESERVED)

12.01.10 – RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

000. LEGAL AUTHORITY.

This chapter is promulgated pursuant to Sections 26-31-103, 26-31-204(5), 26-31-302(1)(a), and 26-31-302(2), Idaho Code. ()

001. SCOPE.

These rules interpret the Idaho Residential Mortgage Practices Act, Title 26, Chapter 31, Idaho Code. ()

002. -- 004. (RESERVED)

005. INCORPORATION BY REFERENCE.

For the purposes of the Act and these rules the full text of the following are incorporated by reference: ()

01. The Real Estate Settlement Procedures Act. As set forth in 12 U.S.C. 2601, et seq., as amended to and including January 1, 2020. The Real Estate Settlement Procedures Act is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title12/html/USCODE-2016-title12-chap27.htm>. ()

02. Regulation X. As issued by the federal Bureau of Consumer Financial Protection and codified at 12 CFR 1024, et seq., as amended to and including January 1, 2020. Regulation X is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/CFR-2018-title12-vol8/xml/CFR-2018-title12-vol8-part1024.xml>. ()

03. The Truth in Lending Act. As set forth in 15 U.S.C. 1601, et seq., as amended to and including January 1, 2020. The Truth in Lending Act is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title15/html/USCODE-2016-title15-chap41.htm>. ()

04. Regulation Z. As issued by the federal Bureau of Consumer Financial Protection and codified at 12 CFR 1026, et seq., as amended to and including January 1, 2020. Regulation Z is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/CFR-2018-title12-vol9/xml/CFR-2018-title12-vol9-part1026.xml>. ()

05. Availability of Documents. Unless otherwise available, the documents incorporated by reference may be viewed at the central office of the Idaho Department of Finance. ()

006. DEFINITIONS.

In addition to the terms defined in the Idaho Residential Mortgage Practices Act, the following definitions apply: ()

01. Act. The Idaho Residential Mortgage Practices Act, Title 26, Chapter 31, Idaho Code. ()

02. Application. In relation to a “residential mortgage loan” or “loan modification” as defined in the Act, an “application” means a request for a residential mortgage loan or loan modification and any form or document representing such request. The term “application” does not include the processing of such request. ()

03. Closing. The process of executing legally binding documents regarding a lien on property that is subject to a residential mortgage loan and includes the day agreed upon by a borrower and a covered person to complete such process. ()

04. Covered Person. A person who has been issued a license, pursuant to the Act, or a person required to be licensed under the Act. ()

007. -- 039. (RESERVED)

040. DECEPTIVE ADVERTISING.

01. Advertising. Advertising means making or permitting to be made any oral, written, graphic or pictorial statements, in any manner, in the course of the solicitation of business authorized under the Act. Deceptive advertising is defined to include the following practices by a covered person: ()

a. Advertising without clearly and conspicuously disclosing the business name and unique identifier assigned by the Nationwide Mortgage Licensing System and Registry (NMLSR) to the covered person. ()

b. Engaging in bait and switch advertising or misrepresenting, directly or indirectly, the terms, conditions or charges incident to services authorized under the Act. Bait and switch advertising, for the purposes of

these rules, means advertising services without the intent to provide them but, rather, to lure a person into making an application for services and then switch the person from obtaining the advertised services to other or different services on a basis more advantageous to the covered person. ()

c. Using an address in advertising at which the covered person conducts no mortgage brokering, mortgage lending, or mortgage loan origination activities or for which the covered person does not hold a license. ()

d. Advertising or soliciting in a manner that has the effect of misleading a person to believe that the advertisement or solicitation is from a person's current mortgage holder, a government agency, or that an offer is a limited opportunity, when such is not the case. ()

041. -- 049. (RESERVED)

050. WRITTEN DISCLOSURES.

01. Receipt of an Application. Upon receipt of an application as defined in Subsection 006.02 of these rules, and before receipt of any moneys from a borrower, a covered person shall make available to each borrower information, in a manner acceptable to the Director, about the services authorized under the Act that he may provide to a borrower. ()

02. Loan Modification Confirmation. Within three (3) business days, including Saturdays, of receipt of a notice from a creditor or its agent of a loan modification offer, a covered person shall deliver or send by first-class mail to the borrower a written confirmation of the terms of the loan modification offer. Such confirmation shall include information regarding proposed rates, payments, and loan balance. ()

051. RESTRICTIONS ON FEES.

If a covered person imposes fees authorized by Section 26-31-210 of the Act, the following restrictions apply, subject to the Director's authority to set limits on fees and charges pursuant to Section 26-31-204(6) of the Act: ()

01. Application Fee. An application fee shall include only the actual costs incurred by a covered person in connection with the taking of an application and transcribing application information. ()

02. Cancellation Fee. A cancellation fee may only be charged at the time of, or subsequent to, a request or instruction by a borrower to a covered person to cancel a request for services authorized under the Act. Such fee must bear a reasonable relationship to the actual costs incurred by the covered person for services provided to a borrower up to the borrower's request or instruction to cancel the request for services. A cancellation fee must comply with the requirements of Regulation Z, when applicable. ()

052. -- 059. (RESERVED)

060. PROHIBITED PRACTICES.

It is a prohibited practice for any covered person in connection with offering or providing services authorized under the Act, to: ()

01. Fail to Disburse Funds Timely. Fail to disburse funds in a timely manner, in accordance with any commitment or agreement with the borrower, either directly or through a mortgage broker: ()

a. Either immediately upon closing of the loan in the case of a purchase/sale transaction; or ()

b. Immediately upon expiration of the three (3) day rescission period in the case of a refinancing, or taking of a junior mortgage on the existing residence of the borrower. ()

c. For the purposes of this Subsection, the term "immediately" represents a period of time no greater than seventy-two (72) hours. ()

02. Fail to Provide Reasonable Opportunity for Document Review. Fail to give the borrower, upon

the borrower's verbal or written request, a reasonable opportunity of at least twenty-four (24) hours prior to closing to review every document to be signed or acknowledged by the borrower for the purpose of obtaining a residential mortgage loan, and every document that is required pursuant to these rules, and other applicable laws, rules or regulations. ()

03. Require Excessive Insurance. Require a borrower to obtain or maintain fire insurance or other hazard insurance in an amount that exceeds the replacement value of the improvements to the real estate. ()

04. Engage in Deceptive Advertising. Engage in any deceptive advertising as set forth in Section 040 of these rules. ()

061. -- 089. (RESERVED)

090. BORROWERS UNABLE TO OBTAIN LOANS.

If, for any reason, a covered person fails to obtain a residential mortgage loan for a borrower that is satisfactory to the borrower, and the borrower has paid for an appraisal, the covered person shall provide a copy of the appraisal to the borrower and transmit and assign original appraisal reports, along with any other documents provided by the borrower, to any other person to whom the borrower directs that the documents be transmitted. The covered person shall provide such copies or transmit such documents within three (3) business days after the borrower makes the request in writing. ()

091. -- 999. (RESERVED)